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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

PATRICK LOYOLA, *on behalf of  
himself and all others similarly  
situated,*

Plaintiff,

v.

WHITWORTH UNIVERSITY,

Defendant.

Case No. 2:23-cv-00179-SAB

**PLAINTIFFS' UNOPPOSED  
MOTION TO CONSOLIDATE  
CASES**

September 12, 2023  
Without Oral Argument

RACHEL WILSON, *on behalf of  
herself and all others similarly  
situated,*

Plaintiff,

v.

WHITWORTH UNIVERSITY,

Defendant.

Case No. 2:23-cv-00203-SAB

1 Pursuant to Federal Rule of Civil Procedure 42(a)(2), Plaintiffs Patrick Loyola  
2 and Rachel Wilson (“Plaintiffs”), individually and on behalf of all others similarly  
3 situated, respectfully move for an Order consolidating the above-captioned matters:  
4 *Loyola v. Whitworth University*, No. 23-cv-00179 (“*Loyola Action*”) and *Wilson v.*  
5 *Whitworth University*, No. 23-cv-00203 (“*Wilson Action*”) (collectively, “Related  
6 Actions”) into the first-filed action: the *Loyola Action* and recaption it as *In re*  
7 *Whitworth University Data Breach*. Plaintiffs’ Counsel in the Related Actions have  
8 met and conferred and are in agreement with this Motion. Likewise, Defendant’s  
9 Counsel for Whitworth University does not oppose consolidation.

10 These actions arise out of the same operative facts—a targeted cyber-attack  
11 that allowed a third party to gain unauthorized access to the computer systems  
12 housing sensitive consumer data maintained by Defendant Whitworth University  
13 (“Defendant” or “Whitworth University”) that reportedly exposed confidential and  
14 sensitive personally identifying information (“PII”) of over 65,000 individuals and  
15 was first discovered in or around April 2023 (the “Data Breach”). The Related  
16 Actions assert similar causes of action, define overlapping classes, and seek similar  
17 remedies as against a common defendant. To maximize efficiency and judicial  
18 economy, the Court should grant Plaintiffs’ Motion, and consolidate the Related  
19  
20

1 Actions into the *Loyola Action*.<sup>1</sup>

2 **I. BACKGROUND**

3 Located in Spokane, Washington, Defendant Whitworth University is  
4 registered in Washington as a nonprofit corporation with its principal address at 300  
5 W Hawthorne Rd, Spokane, WA 99251.

6 The Related Actions each arise out of a targeted cyber-attack that allowed a  
7 third party to gain unauthorized access to the computer systems housing sensitive  
8 consumer data maintained by Defendant. In the course of its business, Defendant  
9 stores and maintains consumers' sensitive and private information, including Social  
10 Security numbers (the "Private Information"). The Related Actions each allege that,  
11 as a result of Defendant's failure to adhere to adequate data security practices, the  
12 Private Information of Plaintiffs and over 65,000 other consumers across the country  
13 was accessed by a malicious actor via a cyberattack (the "Data Breach").

14 Plaintiffs learned they were victims of the Data Breach, and each decided to  
15 file their respective class actions following their receipt of Notice of Data Security  
16 Incident letters from Defendant. Plaintiff Loyola filed his action in this District on  
17 June 22, 2023. *See Loyola v. Whitworth University*, Case No. 2:23-cv-00179-SAB,

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18  
19 <sup>1</sup> Concurrent with this Motion, Plaintiffs in the Related Actions are filing Plaintiffs' Motion to Appoint Interim  
20 Co-Lead Class Counsel and Liaison Counsel seeking to appoint Kevin Laukaitis and Bryan L. Bleichner as  
interim class counsel pursuant to Fed. R. Civ. P. 23(g).

1 ECF No. 1. Plaintiff Wilson filed her action in this District on July 18, 2023. *See*  
2 *Wilson v. Whitworth University*, Case No. 2:23-cv-00203-SAB, ECF No. 1. Through  
3 their respective class actions, Plaintiffs allege a combination of the following causes  
4 of action against Defendant: (1) Negligence; (2) Declaratory Judgment and Injunctive  
5 Relief; (3) violation of the Washington State Consumer Protection Act; (5) Breach of  
6 Implied Contract; (6) Breach of Implied Covenant of Good Faith and Fair Dealing;  
7 and (7) Unjust Enrichment.

## 8 **II. LEGAL ARGUMENT**

### 9 **A. Legal Standard**

10 Rule 42(a) of the Federal Rules of Civil Procedure provides:

11 If actions before the court involve a common question of law or fact,  
12 the court may: (1) join for hearing or trial any or all matters at issue in  
the actions; (2) consolidate the actions; or (3) issue any other orders to  
13 avoid unnecessary cost or delay.

14 Fed. R. Civ. P. 42(a).

15 As the rule states, a motion to consolidate must meet the threshold requirement  
16 of involving “a common question of law or fact.” If that threshold requirement is met,  
17 then whether to grant the motion becomes an issue of judicial discretion. *Invs. Rsch.*  
18 *Co. v. U.S. Dist. Ct. for Cent. Dist. of California*, 877 F.2d 777 (9th Cir. 1989). Courts  
19 have specifically addressed what factors should be considered in determining whether  
20 a motion to consolidate should be granted: “Factors relevant to the analysis include

1 judicial economy, whether consolidation would expedite resolution of the case, whether  
2 separate cases may yield inconsistent results, and the potential prejudice to a party  
3 opposing consolidation.” *Pecznick v. Amazon.com Inc.*, No. 2:22-cv-00743, 2022 WL  
4 4483123, at \*3 (W.D. Wash. Sept. 27, 2022) (citing *Chorak v. Hartford Cas. Ins. Co.*,  
5 No. 2:20-cv-00627, 2020 WL 8611291, at \*1 (W.D. Wash. Nov. 10, 2020)).  
6 Furthermore, “[i]f the court determines that common questions are present, it must then  
7 balance the savings of time and effort that consolidation will produce against any  
8 inconvenience, delay, confusion, or prejudice that may result.” *Desert Mech. Inc. v.*  
9 *Travelers Cas. & Sur. Co of America*, No. 2:15-cv-02298, 2022 WL 1078362, at \*3 (D.  
10 Nev. Mar. 14, 2022) (citing *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984)).

11 **B. Consolidation is Appropriate.**

12 The Complaints in the Related Actions arise out of and relate to the same,  
13 common factual allegations and legal theories. The Related Actions assert multiple  
14 common causes of action against the common Defendant relating to the same facts  
15 and seek the same or similar relief in response to the same event: the Data Breach.  
16 The Actions seek certification of an overlapping nationwide class and allege that  
17 Class Members suffered harm as a result of the Data Breach because their PII  
18 (including Social Security numbers) was exposed to third parties without their  
19 authorization. The Related actions present the quintessential consolidation scenario,

1 and the Court should consolidate to ensure judicial economy and preserve party  
2 resources.

3 Consolidation of the Related Actions (and any future similar actions alleging  
4 claims relating to the Data Breach) is warranted because it will simplify discovery,  
5 pretrial motions, class certification issues, and other case management issues,  
6 especially given that the cases are at their procedural inception. Consolidation will  
7 also reduce the confusion and delay that may result from prosecuting related putative  
8 class actions separately, including eliminating duplicative discovery and the  
9 possibility of inconsistent rulings on class certification, evidentiary motions, and other  
10 pretrial matters. It will also decrease the amount of time that would have been  
11 otherwise required for three separate cases, as many witnesses would have to  
12 necessarily be called in four separate cases. Furthermore, it will foster judicial  
13 economy and will not prejudice any party.

14 Courts consistently find that data breach class actions are particularly  
15 appropriate for consolidation. *See, e.g., In re MCG Health Data Security Issue*  
16 *Litigation*, Case No. 2:22-cv-00849, Dkt. No.31 (W.D. Wa.) (finding consolidation  
17 appropriation in a data breach against a sole defendant); *Hightower v. Receivables*  
18 *Performance Management, LLC*, Case No. 2:22-cv-01683. Dkt. No. 12 (W.D. Wa)  
19 (same); *In re Accellion, Inc. Data Breach Litig.*, No. 21-cv-01155-EJD, 2022 WL

767279, at \*3 (N.D. Cal. Mar. 14, 2022) (sane); *Kostka v. Dickey's Barbecue Rests., Inc.*, No. 3:20-cv-3424-K, ECF No. 37 (N.D. Tex. Mar. 19, 2021) (ordering consolidation of three cases stemming from the same data breach); *Bellwether Cmty. Credit Union v. Chipotle Mexican Grill, Inc.*, No. 17-cv-1102-WJM-STV, 2017 U.S. Dist. LEXIS 142626, at \*3 (D. Colo. Sep. 1, 2017) (“[B]oth actions are substantively identical and are in the same stage of litigation . . . arise out of the same occurrence: a data breach . . . .”); *Fero v. Excellus Health Plan, Inc.*, 236 F. Supp. 3d 734, 745 (W.D.N.Y. 2017) (noting court had previously “issued an order consolidating . . . pursuant to Federal Rule of Civil Procedure 42(a)(2), and transferred the case” to one judge in large data breach litigation); *McDonald v. PaperlessPay Corp.*, No. 3:20-cv-516-MMH-MCR, 2021 WL 931599, at \*5 (M.D. Fla. Mar. 11, 2021) (finding that the data breach litigations presented a number of common factual and legal issues warranting consolidation); *Galaria v. Nationwide Mutual Ins. Co.*, Nos. 2:13-cv-118; 2:13-cv-257, 2017 WL 4987663, at \*3 (S.D. Ohio Aug. 16, 2017) (data breach “consolidation is appropriate under the circumstances of these cases and in the interest of expedition and economy”). Accordingly, Plaintiffs respectfully request that the Court consolidate the Related Actions, and any subsequently filed or transferred actions relating to the Data Breach, under the docket number of the first filed case, *Loyola v. Whitworth University*, No. 2:23-cv-00179-SAB.

1 **III. CONCLUSION**

2 Accordingly, Plaintiffs in the Related Actions move to consolidate *Loyola*  
3 *v. Whitworth University*, No. 23-cv-00179 and *Wilson v. Whitworth University*,  
4 No. 23-cv-00203 under the first-filed action in the United State District Court  
5 for the Eastern District of Washington, and caption the consolidated action as *In*  
6 *re: Whitworth University Data Breach*, Case No. 23-cv-00179.

7 Contemporaneous with the filing of the Motion to Consolidate, Counsel  
8 for Plaintiffs in the Related Actions to Appoint Interim Co-Lead Class Counsel  
9 seeking appointment as interim class counsel pursuant to Fed. R. Civ. P. 23(g).  
10 Plaintiffs will file a consolidated complaint within thirty (30) days from the  
11 Court's ruling on Plaintiffs' Motion to Appoint Interim Co-Lead Counsel.

12 Dated: August 9, 2023

Respectfully submitted,

13 /s/ Samuel J. Strauss

Samuel J. Strauss

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*\*Pro Hac Vice Application forthcoming*

**CERTIFICATE OF SERVICE**

I, Samuel J. Strauss, hereby certify that on August 9, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record via the ECF system.

DATED this 9th day of August, 2023.

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